

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

| | | |
|-----------------------------|---|---------------------------------|
| IN THE MATTER OF THE SALE, |) | |
| RESALE, AND OTHER PROVISION |) | P.S.C. REGULATION DOCKET NO. 10 |
| OF INTRASTATE TELECOM- |) | |
| MUNICATIONS SERVICES |) | |

FINDINGS, OPINION AND ORDER NO. 3283

AND NOW, TO WIT, this 18th day of June, 1991, the Commission enters this Findings, Opinion and Order.

I. BACKGROUND

The Commission initiated this docket on its own motion on May 1, 1984 by Order No. 2550 to "receive evidence, comments and information from all interested parties concerning the development of a comprehensive policy or regulation governing the sale, resale and other provision of Delaware Intrastate Telecommunications Services." By Order 2568, dated July 17, 1984, the Commission modified Order 2550 to expand the scope of this docket "to include therein a consideration of the feasibility, propriety and legality of attaching privately owned pay telephone equipment (also known as "Customer Owned Coin Operated Telephones" or "COCOTs") to the telephone network." However, on October 9, 1984, at the request of Diamond State Telephone, the Commission entered Order 2590, which created a new and separate docket for the consideration of the issues concerning COCOTs.

Staff thereafter filed proposed Rules and Regulations to govern the provision of certain intrastate telecommunications services. By Order 2722, dated March 4, 1986, the Commission determined to seek and consider written and oral comments or submissions by any person relative to Staff's proposed Rules and

ordered the Commission Secretary to circulate copies of and hold the Rules available for public inspection at the Commission's Dover and Wilmington offices, and to cause newspaper publication of a notice to the public inviting comments.

Order 2722 further designated Leroy A. Brill as Hearing Examiner in this docket and authorized him to schedule and conduct full and complete evidentiary hearings and to develop an evidentiary record concerning the sale, resale and other provision of intrastate telecommunication services within the State of Delaware, and, based thereon, to report his findings and recommendations to the Commission.

On October 28, 1986, the Commission by Order No. 2784 divided this proceeding into two phases: Phase I to consider the Rules proposed by Staff, and Phase II to consider the overall issue of whether competition in the provision of intrastate telecommunication service should be permitted in Delaware and, if so, what level of access charges might properly be imposed by Diamond State Telephone Company ("DST") for the use of its facilities by other interexchange carriers. Mr. Brill was designated as Hearing Examiner for both Phases. AT&T Communications of Delaware, Inc. ("AT&T"), MCI Telecommunications Corp. ("MCI"), U.S. Sprint Communications Corp. ("Sprint"), the Office of the Public Advocate ("OPA") and Simon's Data Services ("Simon's") all were granted authority to intervene in this docket. However, only Staff, DST, MCI, Sprint and AT&T

participated actively.¹

The Hearing Examiner received written comments and scheduled and held several hearings with written pre-filed evidence which was cross-examined during February and March, 1987.

The Commission retained an independent consultant, Georgetown Consulting Group, Inc., ("Georgetown") to make recommendations concerning competition and preparation of the proposed rules. Following the hearings and another round of comments, Georgetown issued its "Staff Report" dated April 16, 1990 which recommended authorization of limited competition and submitted Proposed Revised Rules ("Second Proposed Revised Rules") governing such competitive service. Public notice and opportunity for inspection of the Report was duly published and comments again solicited with a cut-off date of July 1, 1990 (later postponed by the Examiner for one month at the request of DST). Comments were received from DST and from the intervening interstate exchange carriers. Staff issued its second Staff Report, dated October 5, 1990 ("Second Report") incorporating some of these criticisms and suggestions. Written comments were again filed by DST and the IXCs.

The Hearing Examiner held a final hearing in Dover on November 14, 1990 for the purpose of clarifying the remaining issues to be determined by the Examiner. The Examiner issued his

¹ AT&T, MCI and Sprint are sometimes referred to herein jointly as the "Interexchange Carriers" or "IXCs".

Consolidated Report and Recommendations on both phases of the proceeding to the Commission on February 8, 1991. Staff and DST filed Exceptions to the Hearing Examiner's Consolidated Report on March 1, 1991. Staff filed further revised Proposed Rules ("Third Revised Proposed Rules") together with its Exceptions. The matter came on for consideration by the Commission at a regularly scheduled Commission meeting on March 19, 1991 at the Commission's offices in Dover, Delaware. Argument was presented by DST, Staff, AT&T, MCI and Sprint. This Findings, Opinion and Order of the Commission is based upon the record in this proceeding, the Consolidated Report of the Hearing Examiner, the Exceptions thereto and the arguments presented to the Commissioners on March 19, 1991.

II. COMPETITION IN THE PROVISION OF INTRASTATE TELECOMMUNICATIONS SERVICES

A. Authorization of Competition

The threshold issue in this proceeding is whether the IXCs and others should be authorized to compete with DST, which currently is the only authorized provider of intrastate telephone service in the State of Delaware, and if so to what extent.

The Hearing Examiner found and recommended to the Commission that the authorization of competition would be of benefit to telecommunications consumers in the message toll ("MTS"), credit card, bulk and resale markets. He also found that competition, if authorized, would not substantially adversely affect DST because potential revenue loss to DST could be largely

offset by access charges. The Hearing Examiner found this particularly to be so if 1+ presubscription is not authorized and DST is allowed to remain the primary carrier of intrastate toll traffic.

The Hearing Examiner found that if allowed to compete, the IXCs would emerge as real competitors in the telephone services market, although he advised that the Commission monitor the development of competition closely. The Hearing Examiner further found that certain benefits could be expected under competition, such as: a wider range of choices of products and services offered, improved efficiency and innovation, and lower prices. Accordingly, the Hearing Examiner recommended that Commission authorize intrastate telecommunications competition in each of the above listed four areas.

DST opposed authorization of competition in the MTS and credit card markets. The company argued that if such competition is authorized, it is likely to lose revenues which may not necessarily be completely offset by its ability to charge for access or even its retention of 1+ Dialing. DST claims any such lost revenues will increase pressure on basic rates.

Staff took no position on the question of authorizing MTS competition. Although Staff generally favors the development of competition, Staff points out that the IXCs have shown little interest in entering the intrastate MTS market at this time and cautions that deregulation may simply allow DST to take advantage of the lack of real competition to raise prices.

The IXCs supported the Hearing Examiner's finding. We agree with the Hearing Examiner and hereby authorize competition in the following markets: 1) message toll service (3-1, McClelland opposed); 2) credit card competition (3-1, McClelland opposed); 3) resale (except DST's flat rate business service) (4-0); and 4) bulk services (i.e., WATS, 800 service and private line services) (4-0).²

DST claimed that if it is required to implement 1+ Intralata Presubscription on an intrastate basis with the IXCs, its toll revenues will be devastated. The IXCs countered that as long as DST retains its monopoly on the 1+ Dialing service, true competition in the telecommunications market is unlikely to develop. Staff recommended that DST should remain the sole 1+ carrier and that toll presubscription not be approved since this competitive advantage for DST would balance the revenues DST is likely to lose through competition in MTS. The Hearing Examiner agreed, as does the Commission. (4-0). The result should be increased competition without a significant adverse impact on basic local exchange service rates.

B. Access Charges

Since the Commission by this Order determines that it will accept and consider applications for Certificates of Public Convenience and Necessity to provide intrastate telecommunication

² The parenthetical indicates the votes of the Commission on motions presented. Commissioners voting against a motion are named. Commissioner Twilley did not participate in the deliberations, due to absence.

services in Delaware, it will be necessary to determine on what basis the IXC's and others may gain access to the Diamond State monopoly local exchange network. All parties are in agreement that the Commission, in a separate docket, will need to determine appropriate access charges. However, in the interim, Staff and the IXC's proposed that DST should be directed to use its FCC-approved interstate access charges as temporary charges under bond. In contrast, DST urged that the Commission delay implementation of this Order until the Commission has had the opportunity to develop appropriate access charges in a new and separate docket. In the alternative, Diamond State asks that any interim access charges be set at \$0.01 above the FCC-approved interstate access rates. The Hearing Examiner recommended that we adopt the IXC's' and Staff's position. However, the Commission will not require DST to set interim access charges based on the FCC-approved interstate access charges. Diamond State represented at the hearing that it would promptly file its intrastate access charges for interim application starting July 1, 1991. Subsequently Diamond State has received our authorization to file that tariff with an effective date of August 1, 1991.

The IXC's argue that Diamond State enjoys an inherent competitive advantage due to its ability to collect access charges from competitors. Since the IXC's will have to recover the amount of these charges from their end user customers, while DST imposes no access charge on its end user customers, the IXC's claim DST will always be able to underprice them and thus prevent effective

competition. They therefore urge that Diamond State be required to impute access charges into its own end user rates. Staff and Diamond State both urge that the imputation issue be deferred to the access charge docket. The Hearing Examiner recommended that the Commission adopt a policy favoring imputation. Since it is unnecessary to decide this question at this time, we decline to do so and will consider it in the separate access charge docket. (4-0). Similarly, we will defer the question of whether Diamond State should be authorized to flexibly price its access charges to the access charge docket. (4-0).

C. Flexible Pricing of End User Services

DST argues that in order to compete effectively with the IXCs it must be permitted to flexibly price its end user services.

The IXCs, except MCI, agree that if there is unrestricted entry in the toll market, DST is entitled to some flexible pricing authority. Staff argues that Diamond State's end user services should continue to be subject to traditional regulatory restraints, although with some specific exceptions where particular services have been shown to be subject to competition.

The Hearing Examiner recommended that we defer this question to the separate access charge docket.

The Commission concludes that, as a general rule, where true competition exists Diamond State should not be restrained from fair competition. Therefore, DST is authorized to flexibly price its competitive end user services on the same basis as applicable to the IXCs; that is, in accordance with the Rules For

The Provision Of Competitive Intrastate Telecommunications Services discussed in Part III of this Order and attached hereto as Exhibit A.

D. Purchase of Private Line and Special Access Facilities

The federally approved interstate tariffs contain provisions which require the IXCs to permit their customers to purchase private line and special access facilities. All parties are in agreement that any intrastate tariffs filed by any telecommunications carriers shall contain similar provisions allowing the purchase of private line and special access facilities from DST. The Hearing Examiner recommended that we adopt such a requirement, and the Commission agrees. (4-0).

III. RULES

Apart from the question of whether the competition in intrastate telecommunications service should be authorized in Delaware (as the Commission has herein determined it should) the Commission must decide the form of Rules governing the provision of such service. As explained above, the Staff submitted Second Revised Proposed Rules with its second Staff Report dated October 5, 1990. It submitted further revised Rules (the "Third Proposed Rules") which conformed the proposed Rules with its Exceptions to the Consolidated Report of the Hearing Examiner. These Revised Proposed Rules contain several provisions which are discussed below.

A. Rule 15

The Second Revised Proposed Rules submitted by Staff to the Hearing Examiner did not distinguish between DST and any competing carriers; therefore, presumably they would apply equally

to both. By the Third Revised Proposed Rules, Staff proposed to add a new Rule 15 which would distinguish between the "dominant" and "nondominant" providers and would exempt the "dominant carrier" (i.e., DST) from coverage under the Rules. Under Rule 15, DST would remain "under traditional regulation generally" with special exceptions to be carved out as appropriate. Diamond State objected to the addition of new Rule 15, on the ground that if competition is to be authorized, DST must be free to compete on a level playing field. We agree and do not adopt proposed Rule 15. (4-0).

B. Rule 8

Rule 8 governs the introduction of new service options or offerings and changes in existing tariffs. As proposed by Staff, Rule 8 requires 60 day notice to the Commission before making such changes or introducing new options or offerings. The Hearing Examiner recommended a much abbreviated waiting period that is, 10 day notice for introduction of new services or options, 14 days notice for price increases and 5 days notice for price decreases. In its Exceptions, Staff proposed a further revision to Rule 8 which would make the Hearing Examiner's abbreviated schedule applicable only to those services which are competitive, and retain the 60 day schedule for all other services. We believe that this further modification is appropriate.

Rule 8 further requires the carrier to file information sufficient to establish the existence of actual competition for

the particular service. As proposed by Staff, the Rule requires the carrier to file such information by service, customer categories, and locations to which the tariff applies. DST objects to the language concerning "location" because, in DST's view, this may be taken to imply that the IXCs are authorized to offer particular services only in certain areas. DST asks that we strike the phrase "and locations." The Commission need not decide the question at this time and, therefore, the phrase "and locations" will be removed from Rule 8 and is adopted. Subject to this modification, Rule 8(a) and 8(b) of the Third Revised Proposed Rules are adopted. (4-0).

The remaining question concerning Rule 8 is whether it applies to Diamond State as well as to the other carriers. By our rejection of Rule 15, we have decided that it does.

C. Rule 14

Rule 14 requires all persons subject to the Rules to provide service in accordance with the Telephone Service Quality Regulations the Commission adopted in PSC Regulation Docket No. 20, Order 3232. Rule 3.5.1.G. of the Service Quality Regulations imposes a 60 day notice period for the introduction of new rates or services. There is thus a possibility of conflict between Rule 14, which by reference requires compliance with the 60 day notice period of Rule 3.5.1.G of the Service Quality Regulations, and Rule 8a, which adopts a shortened notice period where services are demonstrated to be competitive. We therefore deem it appropriate that Rule 14 be modified to be consistent with Rule 8a. (4-0).

The Rules attached as Exhibit A hereto have been so modified.

D. Rule 11

Rule 11 establishes that, as a rule, telecommunications service shall be offered pursuant to tariff. However, Rule 11 authorizes carriers, in response to direct competition, to offer a tariffed service by contract with individual customers if the carrier demonstrates affirmatively to the Commission that there is actual competition for the service and that the proposed rates are at least equal to incremental costs. The issue concerning Rule 11 is whether Diamond State as well as the IXCs should be authorized to enter into individual customer contracts for services demonstrated to be competitive. As discussed above, we believe these Rules, including Rule 11, should apply equally to Diamond State as to other carriers. (3-1, Phillips opposed). Of course, all utilities are still bound by statute to provide non-discriminatory service at just and reasonable rates.

E. Rules 6(c) and 6(f)

Rules 6(c) and (f) impose certain reporting requirements on applicants for Certificates of Public Convenience and Necessity to become telecommunications providers. The IXCs argue that these reporting requirements are too burdensome, however, Staff believes that they will be useful. These reports indeed will provide information useful to the Commission in tracking the effectiveness of competition, and for this reason we adopt them. (3-0, Lester not voting).

F. Remaining Rules

To the extent that Staff Third Revised Proposed Rules

have not been specifically discussed herein, we hereby adopt them.

(3-1, Phillips opposed.) The text of the Rules so adopted is attached hereto as Exhibit A.

IV. SIMON'S DATA SERVICES COMPLAINT

By Order No. 3049 in P.S.C. Complaint Docket No. 295-89, the Commission transferred a complaint by Simon's Data Services against MCI to this docket. The complaint alleged that MCI provides WATS/800 service in Delaware and holds itself out to Delaware customers as providing intrastate service without authorization. The Hearing Examiner recommended that we dismiss this action since it is made moot by the authorization of competitive intrastate telecommunications services. The Commission agrees. (4-0).

NOW THEREFORE, IT IS HEREBY ORDERED THIS 18th DAY OF JUNE, 1991, THAT:

1. The Commission will accept and consider applications for Certificates of Public Convenience and Necessity to provide intrastate telecommunications services in Delaware from proposed providers of such services other than The Diamond State Telephone Co.

2. The Commission will permit The Diamond State Telephone Co. to charge under bond, on an interim basis, subject to refund, the proposed access charges to be filed until such time as the Commission determines the appropriate level of access charges.

3. The Diamond State Telephone Co. is authorized to flexibly price competitive end user service in accordance with the Rules for the Provision of Competitive Service adopted by paragraph 5 hereof and attached hereto as Exhibit A.

4. Any intrastate tariff filed by any telecommunications carrier shall contain provisions similar to the provisions of the carrier's federally approved interstate tariffs, allowing customers to purchase private lines and special access facilities from Diamond State Telephone Co.

5. The "Rules for the Provision of Competitive Intrastate Telecommunications Services" attached hereto as Exhibit A are hereby adopted and promulgated by the Commission to govern the provision of such services in the State of Delaware.

6. The effective date of this Order shall be July 1, 1991.

7. The Commission reserves the jurisdiction to enter such other Orders in this matter as may be deemed necessary and proper.

BY ORDER OF THE COMMISSION:

/s/ Nancy M. Norling
Chairman

Vice Chairman

/s/ Donald D. Phillips
Commissioner

/s/ Joshua M. Twilley
Commissioner

/s/ John R. McClelland
Commissioner

ATTEST:

/s/ Norma Sherwood
Asst. Secretary

EXHIBIT A

DELAWARE PSC RULES

FOR THE PROVISION OF COMPETITIVE

INTRASTATE TELECOMMUNICATIONS SERVICES

Applicability: Any person (carrier) offering intrastate telecommunications services for public use within the State of Delaware (originating and terminating within the State, without regard to how the person decides to route the traffic) is subject to the regulation of the Public Service Commission (hereafter, "Commission") of the State of Delaware.

Persons subject to these regulations (i.e., carriers offering service for public use) include resellers of **WATS** and other bulk telecommunications services and facilities-based carriers. Persons providing telephone service through customer owned, coin operated (or pay) telephones (**COCOTS**) are governed by the Commission Rules in Regulation Docket No. 12 regarding (**COCOTS**) as the same may from time to time be amended. The Commission reserves the right to exempt any person otherwise subject to these Rules from the operation of any portion of such rules for good cause shown after notice and hearing. To the extent that existing tariffs of The Diamond State Telephone Company as of the effective date of these Rules establish rules and regulations inconsistent with

these Rules then, and in that event, the tariff shall control.

Rule 1 - Definitions

- a. **"COCOT"** means Customer Owned, Coin Operated (i.e., pay) Telephone.
- b. **"TELECOMMUNICATION SERVICE" OR "TELEPHONE SERVICE"** means the transmittal of information, by means of electronic or electromagnetic, including light, transmission with or without benefit of any closed transmission medium, including all instrumentalities ancillary thereto, equipment, facilities, apparatus, and services (including the collection, storage, forwarding, switching, and delivery of such information) used to provide such transmission including directory, information and operator service. "Telephone Service" does not include, however:
 - 1. the rent, sale, or lease, or exchange for carrier certificated prior to the effective date of these Regulations and only then to the extent that the regulation of its provision is not Federally preempted.
 - 2. telephone or telecommunications answering services, paging services and physical pickup and delivery incidental to the provision of information transmitted through electronic or electromagnetic media, including light

transmission.

3. Community antenna television service or Cable Television Service to the extent that such service is utilized solely for the one-way distribution of such entertainment services with no more than incidental subscriber interaction required for selection of such entertainment service.

c. **"REGULATED TELECOMMUNICATIONS CARRIERS"** - means persons who provide telephone service for public use within the State of Delaware. For purposes of regulation by the Delaware Public Service Commission the term "Regulated Telecommunications Carrier" specifically does not include:

1. telephone service that is provided by or owned and operated by any political subdivision, public or private institution of higher education or municipal corporation of this State or operated by their lessees or operating agents for the sole use of such political subdivision, public or private institution of higher learning or municipal corporation.
2. a company which provides telecommunications services solely to itself and its affiliates

or members or between points in the same building, or between closely located buildings which are affiliated through substantial common ownership and does not offer such services to the available general public.

3. providers of telephone service by either primarily cellular technology or by domestic public land mobile radio service.

d. **"INTRASTATE"** means telecommunications services that originate and terminate within the State of Delaware, without regard to how the call is switched or routed.

Rule 2 - **Certification Requirement.** All persons (carriers) wishing to provide public intrastate telecommunications services within the State of Delaware are required to file with the Commission an original and ten (10) copies of an Application for Certificate of Public Convenience and Necessity. Such application shall contain all the information and exhibits, hereinafter required and may contain such additional information as the Applicant deems appropriate to demonstrate to the Commission that it possesses the technical, financial and operational ability to adequately service the public interest and that the public convenience and necessity requires or

will require the operation of such business.

Rule 3 - **Notice.** Notice of the filing of such an application shall be published by the Public Advocate, and to such other entities as may be required by the Commission. Each applicant shall publish notice of the filing of the application in two (2) newspapers having general circulation throughout the State in a form to be prescribed by the Commission.

Rule 4 - **License Requirement.** Each applicant for a Certificate shall demonstrate that it is legally authorized and qualified to do business in the State of Delaware, including having received all licenses required by the Division of Revenue of the State of Delaware and by local authorities within the area of proposed operation within the State.

Rule 5 - **Identification and Billing of Intrastate and Interstate Traffic.** Persons (carriers) seeking to provide intrastate telecommunications service within the State of Delaware shall be required in their filings to set forth an effective plan for identifying and billing intrastate versus interstate traffic, and shall pay the appropriate Local Exchange Company for access at its prevailing access charge rates. If adequate means of

categorizing traffic as interstate versus intrastate are not or cannot be developed, then, for purposes of determining the access charge to be paid to the local exchange company for such undetermined traffic, the traffic shall be deemed to be of the jurisdiction having the higher access charges and billed at the higher access charges.

Rule 6 - **Additional Requirements.** Applicants shall be required to present substantial evidence supporting their financial, operational and technical ability to render service within the State of Delaware. Such evidence shall include, but is not limited to:

- a. Certified financial statements current within twelve (12) months of the filing. Publicly traded Applicants must file their most recent annual report to shareholders and SEC Form 10-K. Other indicia of financial capability may also be filed.
- b. Brief narrative description of Applicant's proposed business in Delaware and its operations in other states. Identifications of states in which Applicant presently is providing service, and for which service applications are pending.
- c. Three year construction, maintenance, engineering and financial plans for all services intended to be

provided within the State of Delaware with a technical description of the equipment which will be used to provide such services.

- d. Relevant operational experience of each principal officer responsible for Delaware operations.
- e. Specific description of Applicant's engineering and technical expertise showing Applicant's qualification to provide the intended service including the names, addresses and qualifications of the officers, directors and technical or engineering personnel who will be operating and/or maintaining the equipment to be used to provide such service.
- f. Description and map of the Applicant's owned, leased, and optioned facilities existing and planned to exist within the State of Delaware in the next three years. Also, map showing points of presence within the State of Delaware. All such descriptions and maps shall at all times be kept current and are to be updated as changes are known to the Applicant during the processing of the application and thereafter if the application is approved.
- g. If the applicant does not require deposits, advance payments, prepayments, financial guarantees or the

like from customers and charges only for service after it has been provided, then no bond shall be required. Otherwise, applicant shall file a bond with a corporate surety licensed to do business in Delaware guaranteeing the repayment of all customer deposits and advances upon the termination of service. The Bond need not be filed with the application but no certificate will be issued to an Applicant and no Applicant may commence business until Applicant files such Bond with the Commission. The amount of the Bond will be the greater of (1) 150% of the projected balance of deposits and advances at the end of three years of operations or (2) \$50,000. If at any time the actual amount of deposits and advances held by the holder of a Certificate issued after the effective date of this regulation exceeds the amount projected, the amount of the Bond with surety shall be increased to comply with the requirement in the preceding sentence. Continuation of the Bonding requirement after the first three years will be at the discretion of the Commission which upon application may dispense with the Bond requirement for good cause shown.

- h. Copies of State Business License issued by Delaware

Division of Revenue.

Rule 7 - **Tariffs and Cost Studies.** Each application for a Certificate of Public Convenience and Necessity shall include proposed initial tariffs, rules, regulations, terms and conditions of service specifically adapted for the State of Delaware. Initial tariffs shall be accompanied by cost studies or other supporting data establishing the reasonableness and sufficiency of the proposed rates and charges. Other supporting data filed in lieu of a cost study must clearly establish the economic basis for management's decision to enter the Delaware market for each of the proposed services. Copies of Applicant's tariffs, and terms and conditions of service in other jurisdictions must be provided to the Commission upon request. Applicant's tariffs must include specific policies for customer deposits and advances, for prompt reconciliation of customer billing problems and complaints, and for timely correction of service problems. Applications must provide and keep current the name, address and telephone number of Applicant's Delaware Resident Agent.

Rule 8 - **New Options or Offerings.**

- a. Competition exists - Persons (carriers) seeking to introduce a service option or offering under this section shall file information sufficient to establish the existence of actual competition for the services and customer categories to which the tariff applies.

After initial certification, a person (carrier) may introduce new options or offerings ten (10) days after making a tariff filing with the Commission. A change to an existing tariff can be implemented upon fourteen (14) days notice for price increases and five (5) days notice for price decreases. The tariff filing shall be accompanied by cost studies or other supporting data establishing the reasonableness and sufficiency of the proposed rates and charges. Other supporting data filed in lieu of a cost study must clearly establish the economic basis for management's decision to propose the option, offering or tariff change.

- b. Competition does not exist - After initial certification, a person (carrier) may introduce new options or offerings, or change an existing tariff, 60 days after making a tariff filing with the Commission. The tariff filing shall be accompanied

by cost studies or other supporting data establishing the reasonableness and sufficiency of the proposed rates and charges. Other supporting data filed in lieu of a cost study must clearly establish the economic basis for management's decision to propose the option, offering or tariff change. New options, offerings or tariff changes may be suspended in appropriate cases but normally will be allowed to take effect upon 60 days notice; however, the Commission may for good cause shown waive this requirement and allow the tariffs to go into effect upon shorter notice.

Rule 9 - **Abandonment or Discontinuation of Service.** No person (carrier) shall abandon or discontinue service, or any part thereof, established within the State of Delaware without prior Commission approval and without having previously made provision, approved by the Commission, for payment of all relevant outstanding liabilities (deposits) to customers within the State of Delaware.

Rule 10 - **Reports to be provided to the Commission.** All persons (carriers) certificated to provide Intrastate telephone service for public use after the effective date of these Rules shall provide such information concerning Delaware

operations to the Public Service Commission as the Commission may from time to time request.

- a. The accounting system to be used is the Uniform System of Accounts of the Federal Communications Commission or other uniform system of account previously approved in writing by the Chief Accountant of the Commission.
- b. All reports required by these rules to be submitted to the Commission shall be attested to by an officer or manager of the carrier, under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in charge of the carrier's operation.
- c. All periodic reports required by this Commission must be received on or before the following due dates unless otherwise specified herein, or unless good cause is demonstrated by the carrier:
 1. Annual reports: one hundred twenty (120) days after the end of the reported period.
 2. Special and additional reports: as may be prescribed by the Commission unless good cause to the contrary is demonstrated.
- d. The annual report shall include standard financial

reports (balance sheet, statement of operations, supporting schedules, etc.). This report shall also include (i) the same after-the-fact information that management is provided concerning the measurement of performance provided in Delaware, (ii) the information used to determine the Delaware Income Tax liability, and (iii) financial and operating information for the smallest management unit that includes Delaware. Additional information to be provided includes:

1. Intrastate revenues (net of uncollectibles) by service category;
2. Intrastate access and billing and collection cost by service category;
3. Total number of customers by service category;
4. Total intrastate minutes of use by service category;
5. Total intrastate number of calls by service category;
6. A description of service offered;
7. A description of each complaint received by service category (in the form of a single Complaints Log); and,
8. Verification of deposits, customer advances, the bond requirement and the bond with surety.

NOTE: All reports filed pursuant to the requirement of this section may contain trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature. Such reports to receive confidential treatment must be clearly and conspicuously marked on the title page as containing proprietary information. Each page with the report containing information deemed by the Company to be proprietary in nature shall be so marked.

Rule 11 - **Discrimination Prohibited.** No person (carrier) shall unreasonably discriminate among persons requesting a tariffed service within the State of Delaware. The Commission directs that the operating rule shall be service pursuant to tariff. If, in specific instances, a carrier wishes to provide service pursuant to contract as a response to direct competition, that carrier is required to demonstrate affirmatively that (i) the request is in response to actual rather than potential competition and (ii) that the proposed contract structure and rates are at least equal to incremental cost.

Any finding of unreasonable discrimination shall be

grounds for suspension or revocation of the Certificate of Public Convenience and Necessity granted by the Commission as well as the imposition of monetary and other penalties pursuant to 26 Del. C. Sections 217, 218.

Rule 12 - **Suspension or Revocation of Certificate.** Excessive subscriber complaints against a person (carrier) shall be a basis for suspension or revocation of a carrier's Certificate of Public Convenience and Necessity if, after hearing, the Commission determines such complaints to be meritorious. In all proceedings, the Commission shall give to the person (carrier) notice of the allegations made against it and afford the carrier with an opportunity to be heard concerning those allegations, prior to the suspension or revocation of the carrier's Certificate of Public Convenience and Necessity or other formal action. The burden of establishing the adequate provision of service is upon the utility.

Rule 13- **Blockage.** Persons (carriers) who intentionally or otherwise c
equipment available to the public are required:

- a. To file for a Certificate of Public Convenience and Necessity under these rules, unless already certified by the Commission; or
- b. To immediately block such intrastate traffic so that certification is no longer required.

Rule 14 - **Service Quality.** All persons subject to these Rules shall provide telephone service in accordance with such Telephone Service Quality Regulations as the Commission

has adopted in PSC Regulation Docket No. 20, Order No. 3232. An Applicant seeking to be exempted from any portion of those Rules should file an appropriate application for exemption with the Commission, pursuant to Rule 1.2.3 of the rules adopted by the Commission in Order No. 3232 (PSC Regulation Docket No. 20).

Upon a Commission determination that a specific service in Rule 8.a shall apply to that specific service of that person (carrier) and the 60-day notice requirement of Rule 3.5.1.G, as adopted in the Commission's Order No. 3232 (Docket No. 20) shall no longer apply to it, pending future Commission action.